of credit and eventually to Altas Enterprises or as Altas Enterprises shall order. The Respondents became the endorsees for value and holders of the bills of lading. They became a party to the two contracts of carriage with the Appellants as the carriers, as contemplated by the operation of the Bills of Lading Act, 1855. The Respondents are therefore entitled to sue the carriers in contract. In the circumstances, the Respondents are not entitled to recover on the basis of the arrived market value of the goods. They are entitled to recover what they had incurred under the two letters of credit. They are accordingly entitled to recover the said sum of $275,620.82. As for interest thereon, it should be payable from the dates the suppliers of the goods were paid under the letters of credit and therefore should run from August 5, 1977.

Insofar as conversion is concerned, the Respondents are in exactly the same circumstances as the successful plaintiff bank in *London Joint Stock Bank (Limited)* v. *British Amsterdam Maritime Agency Limited*[2]. Mumtazuddin, not having paid for the goods, were not entitled to the possession of the Bills of Lading and therefore were not entitled to the delivery which was wrongful.

We accordingly dismiss the appeal with costs, but the judgment of the Court below is varied so that Respondents recover the sum of $275,620.82 and interest thereon at 12% per annum from August 5, 1977 up to date hereof.

Appeal dismissed.

Solicitors: *Godwin & Co; Karthigesu & Arul.*

TAN SONG GOU v. GOH YA TIAN

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.)
August 19, 1982]
[Singapore – Civil Appeal No. 83 of 1981]

Practice & Procedure – Agreed bundle of documents – Admission without formal proof – Police report in agreed bundle – Submission of no case to answer – Evidence Act (Cap. 5), ss. 17 and 18.

Tort – Negligence – Car hit from behind.

The respondent in this appeal owned a taxi, SH. 4490 which he hired to one Tan Ah Lek. On June 21, 1978 the taxi driven by Tan Ah Lek was involved in a motor accident. In his police report of the accident Tan Ah Lek said that the taxi was "hit from the rear by Datsun pickup GF. 6797 E".

The Datsun pickup was driven by Tan Song Gou, the appellant. In his police Tan Song Gou said that he was following behind taxi SH, 4490 along Jurong Port Road when he was knocked from behind by motor crane No. 0857 S forcing his pickup to collide into the rear of the taxi.

The motor crane was owned by Walter Wright (S) Pte. Ltd. and driven by one Abdullah. In his police report, Abdullah said that as he was approaching Jurong Interchange all vehicles came to a halt. The pickup overtook his motor crane and swerved left into the empty space in front of his vehicle. At that moment of time, the vehicles ahead came to a halt. As a result his vehicle knocked the rear of the pickup.

The respondent commenced proceedings in the District Court against appellant as driver of the pickup and Walter Wright (S) Pte. Ltd. and another defendant, United Equipment Services (S) Pte. Ltd. At the trial certified true copies of the said police reports were by agreement admitted in evidence as an Agreed Bundle of Documents. The trial magistrate dismissed the claim. He held that the mere production of the police reports did not prove the alleged negligence of the defendants.

Lai Kew Chai J. instead reversed the trial court's decision and allowed the appeal (see [1981] 2 M.L.J. 317). Lai Kew Chai J. held that the three police reports, which were in the Agreed Bundle of Documents and admitted in evidence, formed part of the evidence before the court and that in the absence of other evidence, the respondent had proved on a balance of probabilities that both the driver of the pickup and the driver of the motor crane were negligent. The appellant appealed against the said decision.

Held, dismissing the appeal: (1) the appellant's police report was the documentary statement in which he stated that his pickup collided into the rear of the taxi while the taxi was stationary. It was admitted by the appellant that his pickup collided into the rear of Tan Ah Lek's stationary taxi. It was admitted in evidence by agreement of the parties as one of the documents in the agreed bundle and its contents accordingly need not be proved by calling the person who recorded the statement;

(2) by virtue of that admission, Tan Ah Lek had adduced evidence at the trial that the appellant's pickup collided into his stationary taxi, and in the absence of other evidence, the court was entitled to come to the conclusion that the damage to the said taxi as a result of the collision was due to the negligence of the appellant;

(3) the court was in agreement with Lai Kew Chai J. that the proper practice, if counsel for a defendant wished to make a submission of no case to answer, was for the judge to refuse to rule on it unless counsel elects to call no evidence.

COURT OF APPEAL.

Simon Yuen for the appellant.
Joseph Gay for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): Goh Ya Tian, the respondent in this appeal, owns a taxi, SH.4490 which he hired to one Tan Ah Lek. On June 21, 1978 the taxi, driven by Tan Ah Lek, was involved in a motor accident. In his police report of the accident Tan Ah Lek said that the taxi was "hit from the rear by Datsun pickup GF.6797E."

The Datsun pickup was driven by Tan Song Gou, the appellant. In his police report Tan Song Gou said that he was following behind taxi SH. 4490 along Jurong Port Road and approaching Jurong Interchange when the taxi stopped. He also stopped and while waiting for the vehicles in front to move on he was knocked from behind by a motor crane No.0857S causing his pickup to collide into the rear of the taxi.

The motor crane was owned by Walter Wright (S) Pte. Ltd. and at the time of the collision was driven by one Abdullah bin Haji Bakar. In his police report Abdullah said that as he was approaching Jurong Interchange all vehicles came to a halt. When the vehicles moved forward there was "a car space" in front of him and the pickup overtook his motor crane and swerved left into the empty space in front of his vehicle. At that moment of time the vehicles ahead "came to a halt. Therefore the said motor pickup was stop." As a result his vehicle knocked the rear of the pickup.

The respondent's motor taxi was damaged as a result of the collision with the pickup and he commenced proceedings in the District Court against the appellant as the driver of the pickup and Walter Wright (S) Pte. Ltd. and another defendant United Equipment Services (S) Pte. Ltd. The respondent alleged that the collision which resulted in the damage to his taxi was caused by the negligence of the appellant in the driving of the pickup or in the alternative by the negligence of Abdullah as servant or agent of Walter Wright (S) Pte. Ltd. or of United Equipment Services (S) Pte. Ltd. in the driving of the motor crane or alternatively by the negligence of both the appellant and Abdullah in the driving of their respective vehicles.

At the trial certified true copies of the police reports made by Tan Ah Lek (the driver of the respondent's taxi), Abdullah (the driver of the motor crane) and Tan Song Gou (the appellant and the driver of the Datsun pickup), together with other documents, were by agreement admitted in evidence as an Agreed Bundle of Documents.

Goh Ya Tian, the respondent, the plaintiff in the action gave evidence at the trial. He said that since the commencement of the proceedings he had tried to locate Tan Ah Lek to give evidence but was unsuccessful. He called no other witness and relied on the contents of the three police reports. At the close of the plaintiff's case counsel, one acting for Tan Song Gou and the other acting for the other two defendants, submitted no case to answer after the defendants were put to election and had elected not to call evidence.

The trial magistrate dismissed the claim with costs. He held that the plaintiff had failed to prove negligence on the part of any of the defendants. He held that "the mere production of the police reports did not prove the alleged negligence of the defendants."

The plaintiff, Goh Ya Tian appealed to the High Court. Lai Kew Chai, J. who heard the appeal allowed the appeal against Tan Song Gou, the driver of the pickup and Walter Wright (S) Pte. Ltd. the owner of the motor crane which was driven by Abdullah and dismissed the appeal against United Equipment Services (S) Pte. Ltd.

Tan Song Gou appeals against the judgment of the High Court. Lai Kew Chai, J. held that the three police reports, which were in the Agreed Bundle of Documents and admitted in evidence, formed part of the evidence before the court and that in the absence of other evidence, Goh Ya Tian had proved on a balance of probabilities that both the driver of the pickup and the driver of the motor crane were negligent.

Tan Song Gou in his police report said:—

"While approaching near to S.B.S. Interchange our direction of traffic was stopped by a traffic police who was controlling traffic in front. As I said motor taxi SH.4490 stopped. I also stopped behind it. While awaiting there for signal to move this motor crane 857 suddenly knocked into the rear portion of my m/pickup which forced my vehicle forward and collide into the back of the m/taxi."

Tan Song Gou's police report is a documentary statement in which he stated that his pickup collided into the rear of the taxi while the taxi was stationary. It was an admission by Tan Song Gou that his pickup collided into the rear of Tan Ah Lek's stationary taxi (see sections 17 and 18 of the Evidence Act). It was admitted in evidence by agreement of the parties as one of the documents in the Agreed Bundle (Exh.AB) at the trial and its contents accordingly need not be proved by calling the person who recorded the statement.

By virtue of that admission Tan Ah Lek had adduced evidence at the trial that Tan Song Gou's pickup collided into his stationary taxi and in the absence of other evidence a court is entitled to come to the conclusion that the damage to Tan Ah Lek's taxi as a result of the collision was due to the negligent driving of Tan Song Gou. The appeal is dismissed with costs.

We agree with the observations of Lai Kew Chai, J. that the proper practice, if counsel for a defendant wishes to make a submission of no case to answer, is for the judge to refuse to rule on it unless counsel elects to call no evidence.

Appeal dismissed.

Solicitors: *Khattar, Wong & Partners; Leong & Gay.*

MOSBERT ACCEPTANCE LTD. & ANOR. (In Liquidation) v. LIEW CHOON KEE & ANOR.

[O. C. J. (Rajah J.) April 16, 1982]
[Singapore – Civil Suit No. 281 of 1980]

Practice and Procedure – Claim against defendants for fraud, etc. – Another claim pending in California on same issue – Court's refusal to hear action – Stay of action until action in California "litigated to a finish" – R.S.C. 1970, O.18 r. 19

In Suit No. 281 of 1980, Writ of Summons issued on January 26, 1980, the first plaintiff, a company incorporated in Hong Kong commenced the proceedings against 4 defendants for damages and for conspiracy in or about August 1975 and thereafter in relation to the affairs of the plaintiffs and against the second defendant for a declaration that he held certain shares in a certain company as constructive trustees for the plaintiffs and for other consequential orders.

On July 23, 1980 the action against the first and fourth defendants was discontinued and the writ of summons was amended to include Mosbert Holdings Ltd. (in liquidation) a company incorporated in Hong Kong, as second plaintiff and Liew Choon Kee & C.K. Lim as first and second defendants respectively.

The plaintiffs claimed against the defendants damages under two heads:

(1) US$350,000/- being the amount awarded to the defendant in the California proceedings, which the plaintiffs alleged represents a loss to them due to the fraud practised on the California Court by the defendants and

(2) the costs incurred by the plaintiffs in the California proceedings amounting to HK$4,173,142.21.

Both defendants filed separate summonses stating that the plaintiffs' statement of claim disclosed no reasonable cause of action against the defendants, was frivolous and vexatious and was an abuse of the process of the court. The defendants also contended in the alternative, under the inherent jurisdiction of the Court, that this action against the defendants be dismissed on the ground of *res judicata*, the issues in this action having been determined and adjudicated upon in the United States District Court for the Northern District of California in an action.

Held: as the plaintiffs could not be allowed to run their claim for US$350,000/- *in tandem* both in California and in Singapore, clearly the Singapore action must be stayed;

(2) a stay of the proceedings in Singapore would therefore be ordered until the action run in California "has been litigated to a finish" in the American Courts.

Case referred to:

(1) *Wright* v. *Bennett* [1948] 1 All E.R. 227, 230.

CIVIL SUIT.

H. Elias for first defendant/appellant.

Ho Ung Tuck for second defendant/appellant.

A. Irvine Q.C. with *Denis Murphy* for Liquidator of first and second plaintiffs/respondents.

Cur. Adv. Vult

Rajah J.: In Suit No. 281 of 1980 – Writ of Summons issued on the January 26, 1980 – Mosbert Acceptance Limited (In Liquidation), a company incorporated in Hongkong, commenced proceedings against four Defendants, namely (1) Chuan Hiap Seng (Private) Limited, (2) Liew Koon Chee, (3) C.K. Lim and (4) Robert Shao-An Hsieh, firstly for damages against the Defendants and each of them for conspiracy in or about August 1975 and thereafter in relation to the affairs of the Plaintiff Company and other companies of the Mosbert Group and secondly against the 2nd Defendant for a declaration that he holds certain shares in a certain company as constructive trustee for the Plaintiff and for other consequential orders.

On the July 23, 1980 the Plaintiff Company wholly discontinued the action against the 1st and 4th Defendants. The Writ of Summons was amended on the September 8, 1981 whereby Mosbert Holdings Limited (In Liquidation) a company incorporated in Hongkong, was brought in as 2nd Plaintiff and the 1st and 4th Defendants were struck out leaving Liew Choon Kee and C.K. Lim as 1st and 2nd Defendants respectively. On the September 12, 1980 the Plaintiffs filed their Statement of Claim wherein the main thrust against the now two Defendants was that as stated in paragraph 23:–